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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Swinerton & Walberg Co.

File: B-242077.3

Date: March 22, 1991

Richard L. Keller for the protester.
Chuck Coburn, Esq., Federal Bureau of Prisons, for the agency.
Richard P. Burkard, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Where the bid opening officer receives a hand-carried bid after declaring the arrival of the bid opening time as shown on the bid opening room clock, the agency properly rejected the bid as late. The bid opening officer's declaration is determinative of lateness unless shown to be unreasonable under the circumstances.

DECISION

Swinerton & Walberg Co. protests the rejection of its bid as late under invitation for bids (IFB) No. 262-006, issued by the Federal Bureau of Prisons, Department of Justice, for the construction of federal prison facilities in Florence, Colorado. We deny the protest.

The IFB required that bids be submitted by 2 p.m., Mountain Standard Time, on November 1, 1990. At approximately 1:25 p.m., agency officials set up a time clock at the place of bid opening. The contracting officer then called the "local time phone number and set the time clock accordingly." At approximately 1:35 p.m., a representative of Swinerton entered the bid opening room and noted the time indicated on the bid opening room time clock.

The record shows that at 2 p.m., as displayed on the bid opening room clock, the contracting officer announced that it was 2 p.m. and that the government would no longer be accepting bids. After the contracting officer's announcement, a Swinerton representative approached the contracting officer and requested that its bid be accepted. The contracting officer stated that it was after 2 p.m. and that the bid

would not be accepted. The bid envelope was stamped with a time of 2:01 p.m. according to the bid opening room clock, and the contracting officer did not open or read Swinerton's bid. Accordingly, the bid was rejected as late.

The protester asserts that it actually submitted its bid prior to the 2 p.m. deadline and that the time shown on the bid opening clock was incorrect. The protester contends that the time as stated in the telephonic time report, which the contracting officer relied upon in setting the bid opening room clock, was not synchronized with the correct time as indicated by the National Institute of Standards and Technology (NIST) in Boulder, Colorado. The protester argues that the time stated in the telephonic report was at least 1 minute ahead of that announced by NIST and that a total error in excess of 2 minutes is not inconceivable. The protester also argues that the agency would have obtained substantial savings by accepting its bid.

Under Federal Acquisition Regulation § 14.402-1(a), the bid opening officer must decide when the time set for opening bids has arrived and must inform those present of that decision. The bid opening officer's declaration of bid opening is determinative of lateness unless it is shown to be unreasonable under the circumstances. Chattanooga Office Supply Co., B-228062, Sept. 3, 1987, 87-2 CPD ¶ 221. Here, the contracting officer used the clock in the bid opening room to determine that the time set for bid opening had arrived and then announced that it was time for bid opening. With respect to the accuracy of the bid opening room clock, the difference of a few minutes between the bid opening clock and a telephonic report, alleged to be the correct time, is not sufficient in itself to render the declaration unreasonable. Id.; K.L. Conwell Corp., B-220561, Jan. 23, 1986, 86-1 CPD ¶ 79. Since the contracting officer did, in fact, verify the bid opening clock with a telephonic report, we find that the contracting officer clearly acted reasonably in determining when the time set for opening bids had arrived. Absent exceptional circumstances not present here, it would be unreasonable to expect the contracting officer to verify the accuracy of the telephonic report.

Moreover, a late bid must be rejected even though it may be more advantageous to the government than those timely received, since the maintenance of confidence in the integrity of the government procurement system is of greater importance

than the possible advantage to be gained by considering a late bid in a particular procurement. W.W. Asphalt, B-235560, Aug. 3, 1989, 89-2 CPD ¶ 106.

The protest is denied.

Robert T. Murphy
for James F. Hinchman
General Counsel